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LEASE AGREEMENT  
BY AND BETWEEN  
BOSTON REDEVELOPMENT AUTHORITY  
AND  
TRAILWAYS OF NEW ENGLAND, INC.



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## LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into as of the day of                   , 1976 by and between the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts, ("Lessor") and TRAILWAYS OF NEW ENGLAND, INC., a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, ("Lessee").

### W I T N E S S E T H

WHEREAS, with the assistance of the federal, state and city governments, Lessor is carrying out the South Station Urban Renewal Project ("Project") pursuant to the South Station Urban Renewal Plan ("Plan"); and

WHEREAS, Lessor has caused the renovation and restoration of certain portions of the so-called South Station Headhouse ("Building") and intends, if funds are available therefor and necessary approvals forthcoming, to cause the construction of a major intermodal transportation terminal or a wholly or partially renovated rail and bus terminal at South Station ("Intermodal Transportation Terminal"); and

WHEREAS, Lessee has indicated an interest in becoming a long term tenant of the Intermodal Transportation Terminal; and

WHEREAS, Lessor has informed Lessee that the Intermodal Transportation Terminal will not be constructed if such funds and approvals are not received; and

WHEREAS, Lessor has partially constructed a bus facility at South Station ("Bus Facility"); and

WHEREAS, Lessor has the necessary authority to enter into this Lease; and

WHEREAS, Lessor and Lessee desire to enter into this Lease Agreement.



NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

## ARTICLE I

### LEASE OF PREMISES

Section 1.01 Demise of Property. Lessor, for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of Lessee to be paid, kept, observed and performed, has leased, rented, let and demised, and by these presents does lease, rent, let and demise unto Lessee, and Lessee does hereby take and hire, upon and subject to the conditions and limitations hereinafter expressed, that certain "Property" (as defined in Section 2.03 hereof), to have and to hold the Property, subject as aforesaid, and subject to the terms, covenants, agreements and provisions hereof, unto Lessee for the uses and purposes described in Article IV hereof for the "Term" (as defined in Section 2.04 hereof).

## ARTICLE II

### DEFINITIONS

Section 2.01. Bus Property. The term "Bus Property" shall mean the property outlined in red on Exhibit A, attached hereto and hereby made a part hereof, and all improvements, fixtures, appurtenances and easements, and alterations, replacements, additions and substitutions therefor, now or hereafter located thereon.

Section 2.02. Station Property. The term "Station Property" shall mean the property outlined in red on Exhibit B, attached hereto and hereby made a part hereof, and all improvements, fixtures, appurtenances and easements, and alterations, replacements, additions and substitutions therefor, now or hereafter located thereon.



Section 2.03. Property. The term "Property" shall mean the Bus Property and the Station Property together.

Section 2.04. Term. The term "Term" shall have the meaning set forth in Section 5.01 hereof.

Section 2.05. Taking. The term "Taking" shall mean a taking (or the sale to a public authority after legal notice of a taking) of all or part of the Property or any interest therein or right accruing thereto, as the result of or in lieu of condemnation or exercise of the power of eminent domain and shall be effective for the purposes of this Lease as of the date on which possession is required to be surrendered.

Section 2.06. Unamortized Leasehold Improvement Costs. The term "Unamortized Leasehold Improvement Costs" shall mean the product of the amount duly and reasonably incurred by Lessee on the "Construction" (as defined in Section 2.07 hereof) which shall not in any event exceed (\$ ), times a fraction, the numerator of which is the number of months in the Term then remaining, which shall not in any event exceed sixty (60), and the denominator of which is sixty (60).

Section 2.07. Construction. The term "Construction" shall have the meaning set forth in Section 9.01.

### ARTICLE III

#### TITLE AND CONDITION OF PROPERTY

Section 3.01. Title. The Property is subject to:

- (a) the existing state of title thereof as of the date hereof including, without limitation, easements and encumbrances of record;
- (b) any state of facts that an accurate survey of physical inspection thereof might show;
- (c) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations; and
- (d) the physical condition of buildings, structures and other improvements and any fixtures, located on the Property as of the date hereof, without representation or warranty of any kind by Lessor.



Section 3.02. Condition of Property. Lessor hereby expressly disclaims any warranties of any nature, express or implied, as to the structural integrity of the Property, and any other warranties of any nature, express, implied or otherwise, except as expressly set forth in this Lease. Lessee hereby accepts the Property "as is."

#### ARTICLE IV

##### USE OF PROPERTY; QUIET ENJOYMENT

Section 4.01. Use. Lessee shall:

- (a) use the Bus Property only as a bus terminal and the Station Property only (i) for purposes related or incidental to the Bus Facility including, without limitation, the sale of tickets, a travel agent, the handling and storage of baggage, baggage lockers, and a baggage express service, but excluding restaurant and food and beverage dispensing and vending operations and uses related or incidental to the Bus Facility that compete with the uses of Lessor in the Building or Bus Facility or, except as expressly permitted under this Subsection 4.01(a)(i), its other lessees or licensees and (ii) for office space related thereto;
- (b) not engage in, or suffer or permit the engagement in, any use not permitted by the Plan, notwithstanding anything herein contained to the contrary; and
- (c) not discriminate on the basis of race, color, religion, sex or national origin in the use or occupancy of the Property.

In addition and as hereinafter specified, Lessor shall grant to Lessee the nonexclusive right to use the following described area of the Bus Facility for the Term of this Lease, for reasonable, peaceful and orderly passage and repassage by Lessee's buses and employees, such passage and repassage to be over and upon the Bus Easement Area shown on Exhibit A ("Bus



Easement Area"), provided that Lessee shall repair and maintain that portion of such area as is designated on Exhibit A for repair and maintenance by Lessee.

Section 4.02. Covenants Running with the Land. The agreements and covenants contained in Section 4.01 hereof shall be covenants running with the land and shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Lease be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, Lessor, its successors and assigns, any successor in interest to the Property, or any part thereof, and the United States of America in the case of the covenant set forth in Section 4.01(b) against Lessee. The agreement and covenant provided in Section 4.01(a) shall remain in effect throughout the Term, at which time such agreement and covenant shall terminate and the agreements and covenants provided in Subsection 4.01(b) hereof shall remain in effect without limitation as to time, provided, that such agreements and covenants shall be binding upon Lessee, each successor in interest to the leasehold estate and the Property, and every part thereof, respectively, only for such period as such successor or party shall have an interest in the Property or any part thereof.

Section 4.03. Beneficiaries. In amplification, and not in restriction of the provisions of Section 4.02 hereof, it is intended and agreed that Lessor and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Section 4.01 hereof, and the United States of America shall be deemed a beneficiary of the covenant provided in Subsection 4.01(b) hereof, both for and in their or its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of Lessor and the United States of America, for the entire period



during which such agreements and covenants shall be in force and effect, without regard to whether Lessor or the United States of America has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. Lessor shall have the right, in the event of any breach of any such agreement or covenant, and the United States of America shall have the right in the event of any breach of the covenant provided in Subsection 4.01(b) hereof, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

Section 4.04. Quiet Enjoyment. Lessor represents and warrants that it has the right, power and authority to enter into this Lease and that Lessee, upon paying the Rent (as defined in Section 6.01 hereof) and additional rents reserved herein and observing and keeping the covenants, agreements and stipulations of this Lease on its part to be paid, observed and kept, shall lawfully, peaceably and quietly hold, occupy and enjoy the Property during the Term, without hindrance, ejection or molestation by Lessor or any person or persons claiming under Lessor. Lessee shall have the right to terminate this Lease or to seek a rent abatement for a material breach of this covenant. Lessor and its agents may enter and examine the Property at all reasonable times in order to determine whether Lessee is in compliance with the provisions hereof.

Notwithstanding anything to the contrary contained in this Section 4.04 or elsewhere in this Lease, Lessee acknowledges that:

- (a) in accordance with other lease agreements entered into prior or subsequent to this date by and between Lessor and certain other bus carriers, such other bus carriers will be using the Bus Facility of which the Bus Property is a part and



will be using certain portions of the Building of which the Station Property is a part in common with Lessee, but nothing herein shall entitle such other bus carriers to use the Property, or any part thereof, except for the so-called "pedestrian walkway," preliminary plans for which have been furnished by Lessee to Lessor. Lessee hereby authorizes Lessor to license, or, if requested by Lessor, Lessee shall license such other bus carriers, for the purpose of providing the passengers of such other bus carriers with the right to pass to and from the Bus Facility along such pedestrian walkway; provided that the terms of any such license shall require any such licensee to name Lessee as an insured party on any insurance policies covering the use of the pedestrian walkway, as Lessee's interest may appear, and:

- (i) the terms of any such license with Plymouth and Brockton Street Railway Company shall require Plymouth and Brockton Street Railway Company to pay Five Thousand Dollars (\$5,000) per year in equal monthly installments in advance on the first day of each month during the term of such license plus twelve and one-half (12 1/2) cents for each of its bus departures per day in excess of one hundred (100) departures per day payable quarterly in arrears; and
- (ii) the terms of any such license with any other such bus carrier, other than Plymouth and Brockton Street Railway Company, shall require any such bus carrier to pay twelve and one-half (12 1/2) cents for each of their respective bus departures per day payable quarterly in arrears,

all of which amounts shall be paid, in accordance with the terms of any such license, by Lessor to Lessee, or at Lessor's request by such licensee to Lessee; and



(b) the activities of Lessor, the Federal Railroad Administration, the Consolidated Rail Corporation or the National Railroad Passenger Corporation and the successors, assigns or agents of any of them in connection with the construction, renovation and restoration of the Intermodal Transportation Terminal may inconvenience Lessee and cause disruption to its operations. The conduct of such activities shall not constitute a material breach of the covenant set forth in this Section 4.04 unless they directly cause the discontinuance or material interruption of Lessee's operations.

Section 4.05. Common Areas. Lessee and its business invitees may, incident to the furnishing or use of Lessee's operations, use the common areas outlined in red on Exhibit C attached hereto including, without limitation, the public restrooms shown thereon or such other common areas as Lessor in its sole discretion may substitute therefor, and Lessor shall be responsible for the maintenance and security of such areas. Lessor shall have no responsibility for the maintenance or security of the Bus Facility or the traffic and pedestrian control and public safety related thereto.

Section 4.06. Substituted Premises. Lessor may on the terms and conditions set forth hereinafter substitute for the Property, or any part thereof or easements relating thereto, other premises (referred to hereinafter as the "Substituted Premises"). If Lessor makes a substitution of the Station Property, the Substituted Premises shall be in the Building. In any event, the Substituted Premises shall be similar to the property for which it is substituted in area and use. Lessor shall pay all expenses of Lessee for moving from such property to the Substituted Premises and for improving the Substituted Premises so that they are similar, as aforesaid, to such property. In addition, Lessee shall not be required to vacate such property until the Substituted Premises are ready for occupancy and Lessor shall give Lessee at least thirty (30) days' notice of the move to the Substituted Premises. Such move shall be



made during evenings, weekends, or otherwise so as to incur the least practicable inconvenience to Lessee. If Lessor makes a substitution of premises as provided herein, Lessee shall no longer have rights with respect to such property and the Substituted Premises shall for all purposes be substituted hereunder for such property. The provisions of this Section 4.06 shall not apply to Lessee's occupancy of other or substitute premises in accordance with Sections 5.02 or 14.01 hereof.

Section 4.07. Operation of Bus Facility. Lessee shall cooperate fully with Lessor and any lessees and licensees of Lessor located in the Building or Bus Facility for the purpose of coordinating the use, maintenance and occupancy of the Building and Bus Facility in accordance with the provisions of this Lease. In this connection, Lessee shall exercise its best efforts to reach agreement with such other lessees and licensees on, without limitation, such matters as Bus Facility maintenance, security, and safety so as to cause the due and diligent performance of the obligations of Lessee and such other lessees and licensees to Lessor.

#### ARTICLE V

##### TERM OF LEASE

Section 5.01. Term. The Term of this Lease shall be the period commencing on the date hereof and ending:

- (a) at midnight on the date that is seventy eight (78) months from the date hereof;
- (b) simultaneously with the occupancy by Lessee of a part of the Intermodal Transportation Terminal under a lease with Lessor, or its successor or assignee;
- (c) at any time after the end of the sixtieth (60th) month from the date hereof, on the one hundred and twentieth (120th) day after the date of the giving of a termination notice by Lessor to Lessee, but only in the event that Lessor has notified Lessee that the Intermodal Transportation Terminal is ready for occupancy by Lessee, and



Lessor and Lessee do not enter into a lease demising to Lessee a part of the Intermodal Transportation Terminal.

whichever first occurs.

Section 5.02. Option to Extend. If this Lease has not been terminated, on or before the date that is sixty-six (66) months from the date hereof, Lessor shall give Lessee notice setting forth its reasonable determination whether the Intermodal Transportation Terminal will be ready for occupancy by Lessee upon the expiration of the Term if such expiration is pursuant to Subsection 5.01(a) hereof. Lessee may by notice to Lessor within three (3) months after receipt of such notice from Lessee elect to extend this Lease for an additional term of five (5) years from the date of such expiration ("Extended Term") upon all of the same terms and conditions contained herein except that the annual base rental during the Extended Term shall be an amount equal to one hundred thirty five (135) percent of the annual base rental for the last twelve (12) months of the Term. Lessor may terminate this Lease at any time during the Extended Term on the one hundred and twentieth (120th) day after the date of the giving of a termination notice by Lessor to Lessee. In such event Lessor shall relocate Lessee within the Project area in premises sufficient to enable Lessee to carry on the bus operations contemplated hereunder, which premises may not be similar or comparable to the Property in location, area, use or other respects. Lessee's use of such premises shall be upon all of the same terms and conditions contained herein except that Lessee may seek a rent abatement therefor. The provisions of Section 5.05 shall not apply to a termination of this Lease in accordance with the preceding sentence.

Section 5.03. Early Termination. During the Term or any extension thereof, if any governmental agency or body having jurisdiction over Lessee's operations on the Property should, for any reason, duly prevent Lessee from continuing to operate the bus terminal as herein contemplated or any substantial portion of the bus service on the Property, or



duly determine, for any reason, that Lessee may no longer operate a substantial number of its buses in or out of the Property, Lessee may, at its election, terminate this Lease on the ninetieth (90th) day after the giving of a termination notice by Lessee to Lessor; provided, however, that Lessee shall duly and diligently maintain and seek to obtain all necessary licenses, approvals and permits for the operation of its buses.

Section 5.04. Summer Street Realty Corporation Easement.

Lessor and Lessee acknowledge the existence of that certain easement right granted by Lessor to Summer Street Realty Corporation and shown on Exhibit A attached hereto. In the event that Lessor has not obtained a waiver or release of such easement right by Summer Street Realty Corporation on or before February 1, 1977, Lessee may terminate this Lease upon notice to Lessor, and, in such event, Lessor shall indemnify and hold harmless Lessee from all costs and expenses incurred by Lessee between the date hereof and February 1, 1977, in fulfilling its obligation to prepare and submit architectural drawings and specifications under Section 9.01 hereof. Lessee's right to such indemnification under this Section 5.04 shall be Lessee's sole right and recourse in the event that Lessor does not obtain such waiver or release.

Section 5.05. Relocation Benefits. Lessee hereby waives any right to receive, and releases Lessor and all other governmental entities from the obligation, if any, to make, any and all relocation payments or payments for moving expenses as a result of the termination of this Lease in accordance with its terms. The provisions of this Section 5.05 shall not apply to any such payments that are made or reimbursed by the United States of America or any agency thereof so long as Lessor reasonably determines that the making or reimbursement of such payments will not result in a reduction of the funds or benefits that would otherwise be made available by the United States of America or any agency thereof to relocatees of the Project, Lessor, the City of Boston, the Commonwealth of Massachusetts or any agency or subdivision of the foregoing.



## ARTICLE VI

### RENT

Section 6.01. Rent. Lessee covenants to pay to Lessor, at Lessor's address for notice set forth in Section 17.01 hereof or at such place or to such person as Lessor from time to time may designate by notice to Lessee, in such coin or currency of the United States of America as shall at the time of payment be legal tender for the payment of all debts, public or private, as rent ("Rent") for the Property, commencing on the date hereof and thereafter throughout the Term, an annual base rental equal to One Hundred Thousand Dollars (\$100,000).

Section 6.02. Installments. The Rent shall be payable in equal monthly installments each in advance on the first day of each month during the Term commencing, subject to Section 9.03 hereof, on the date of first occupancy by Lessee, whether total or partial, June 1, 1977, whichever occurs first. If the last day of the Term is a day other than the last day of a calendar month, then Lessee shall pay, upon the last day of the Term One Three Hundred Sixty Fifth (1/365th) of the Rent for each day between the first day of the fractional calendar month in which the last day of the Term occurs and the last day of the Term.

Section 6.03 Additional Rent. Lessee covenants to pay and discharge when the same shall become due, as additional rent, all other amounts, liabilities and obligations that Lessee by or pursuant to this Lease assumes or agrees to pay or discharge, together with every fine, penalty, interest and cost that may be added by the payee thereof for nonpayment or late payment and, in the event of any failure on the part of Lessee to pay or discharge any of the foregoing, Lessor shall have all rights, powers and remedies as are provided herein or by law in the case of nonpayment of the Rent or additional rent. Interest at the rate of the large business prime rate charged from time to time on short term loans to large businesses with the highest credit standing by The First National Bank of Boston on all late or overdue payments of Rent and additional rent relating to obligations that Lessor shall have paid on behalf of Lessee shall accrue and be due to Lessor with respect to any such late



or overdue payment commencing on the date when payment thereof should have been received by Lessor and ending on the date when Lessor receives payment.

Section 6.04 Quarterly Statements. The rent set forth herein is based upon Lessee's projections that there will be, among it and its subtenants, collectively, approximately One Hundred and Sixteen (116) bus departures per day from the Property. In this connection, Lessee shall furnish Lessor on the fifteenth (15th) day of January, April, July and October in each year with a statement, certified and sworn to by the President of Lessee, setting forth the number of such departures for each day during the three (3) month period ending on the last day of the prior month. Lessor or its authorized agents shall have access to the Bus Property and the books and records of Lessee at all reasonable times for the purpose of verifying such statements. In addition, Lessee shall furnish Lessor with copies of any documents filed with any governmental agency if such documents contain information relating to bus departures from the Bus Facility.

Section 6.05. Additional Bus Facility Rent. If the number of bus departures of Lessee and its subtenants, collectively, increases to more than one hundred and thirty eight (138) per day, Lessee shall pay additional rent in an amount equal to One Dollar (\$1.00) for each bus departure per day in excess of one hundred and thirty-eight (138) per day. Such additional rent shall be paid in the manner described in Section 6.01 hereof and at the time of the submission of and together with the quarterly statements described in Section 6.04 hereof. Notwithstanding anything to the contrary herein contained, Lessee and its subtenants shall not increase the number of bus departures each day from the Bus Facility to more than that number which, taking into consideration the scheduled departure times thereof, in the reasonable opinion of Lessor can be accommodated in the Bus Facility without hindering Lessor's ability to lease portions of the Bus Facility other than the Bus Property to other carriers or disrupting or interfering with the operations of such other carriers. In this connec-



tion, Lessor shall consult with Lessee with respect to the number of trips per day that can be accommodated in the Bus Facility and shall give Lessee an opportunity to provide information thereon.

## ARTICLE VII

### TAXES, ASSESSMENTS AND IMPOSITIONS

Section 7.01. Assessments. As additional rent under this Lease and in addition to the Rent hereinabove provided for, Lessee shall pay or cause to be paid (a) all charges for water, gas, light, heat, telephone, electricity, power and other utility and communication services at any time rendered or used on or about the Property, and (b) except as provided in Section 7.02 and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all water rates, sewer rents and charges, all personal property taxes, all sales and use taxes which may be levied or assessed against or payable by Lessee on account of the leasing or use of the Property or any portion thereof by Lessee, and all other governmental charges of every character, general and special, ordinary and extraordinary, and whether or not the same shall have been in the express contemplation of the parties hereto (all of which taxes, assessments, water rates, sewer rents and charges and other governmental charges, are, subject to the exclusions therefrom expressed in Section 7.02, hereinafter called "Impositions"), which are assessed, levied, confirmed, imposed or become a lien upon the Property on account of the leasing or use of the Property or any portion thereof by Lessee; provided, however, that if by law, any such Imposition may at the option of the taxpayer be paid in installments, whether or not interest shall accrue on the unpaid balance of such Imposition, Lessee may exercise the option to pay the same, and any accrued interest on the unpaid balance of such Imposition, in installments, and shall pay such installments as may become due during the term of this Lease as the same respectively become due and



before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

Section 7.02. Excluded Impositions. The term "Imposition" does not include, and nothing in this Lease contained shall require Lessee to pay, any real estate, franchise, corporate, estate, inheritance, succession, capital levy or transfer tax, or any income, excess profits or revenue tax of Lessor, or any other tax, assessment, charge or levy upon the Rent payable by the Lessee under this Lease, unless any such tax, assessment, charge or levy is imposed or levied upon or assessed against Lessor in substitution for or in place of any other tax assessment, charge or levy referred to in Section 7.01. Any tax, assessment, charge or levy imposed, levied or assessed against Lessor in substitution for or in place of any other tax, assessment, charge or levy referred to in, and for which Lessee is liable in accordance with, Section 7.01 shall be deemed to be an "Imposition" and shall be payable by Lessee if specifically determinable, and only to the extent that such substitute Imposition would be payable if the Property were the only property of Lessor subject to such Imposition. Any real estate tax on the Property whether imposed or levied upon or assessed against Lessee or Lessor shall be paid by Lessor.

Section 7.03. Receipts. Lessor and Lessee shall, upon request of the other, furnish to the requesting party for inspection by it, official receipts of the appropriate authority or other documentation satisfactory to the requesting party evidencing the payment of any Imposition by such other party.

Section 7.04. Permitted Contests. Lessor or Lessee, as the case may be, shall not be required to pay, discharge, or remove any Imposition (including penalties and interest), upon or against the Property, or any part thereof, so long as Lessor or Lessee, as the case may be, shall in good faith contest the same or the validity thereof by appropriate legal proceedings, and shall give to the other prompt notice in writing of such contest at least ten (10) days before any delinquency occurs,



provided that said legal proceedings shall operate to prevent the collection of the Imposition so contested, and the sale of the Property, or any part thereof, to satisfy the same, and provided, further, that Lessor or Lessee, as the case may be, shall, prior to the date such Imposition is due and payable, have given such reasonable security as may be required by the other from time to time in order to insure the payment of such Imposition and to prevent any sale, foreclosure or forfeiture of the Property or any part thereof, by reason of such nonpayment. Such security shall not exceed a sum equal to one and one-quarter times the amount of such Imposition and all penalties, fines and interest which can be assessed thereon. In the event of any such contest and the final determination thereof adversely to Lessor or Lessee, as the case may be, such party shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by such party and, after such payment and discharge by such party, the other party will promptly return to such party such security as the other party shall have received in connection with such contest.

Section 7.05. Apportionment of Impositions. Any Imposition relating to a fiscal period of the taxing authority, a part of which is within the Term and a part of which is prior to or subsequent to the Term, shall, whether or not such Imposition shall be assessed, levied, imposed, or become a lien upon the Property or shall become payable during the Term, be apportioned and adjusted between Lessor and Lessee as of the date hereof or last day of the Term, as the case may be, so that Lessor shall pay that proportion of such Imposition which that part of such fiscal period included in the period of time prior to the date hereof or subsequent to the end of the Term bears



to such fiscal period, and Lessee shall pay the remainder thereof. With respect to any Imposition for public improvements or benefits which by law is payable, or at the option of the taxpayer may be paid, in installments, Lessor shall pay the installments thereof which become due and payable subsequent to the end of the Term, and Lessee shall pay all such installments that become due and payable at any time during the Term even though payment is postponed beyond the end of the Term by Lessee.

Section 7.06. Compliance with Laws. Lessee shall, at its sole cost and expense, comply with and shall cause the Property to comply with (a) all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Property or any part thereof, or the use thereof, and (b) all rules, orders and regulations of the National Board of Fire Underwriters or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions, which apply to the Property. Lessee shall comply with each and every requirement of all policies of public liability, fire and other insurance that at any time may be in force with respect to the Property.

#### ARTICLE VIII

##### DISCHARGE OF LIENS

Section 8.01. Discharge of Liens. Lessee shall not create or permit or suffer to be created or to remain, and will discharge, any lien including, but not limited to, the liens of mechanics, laborers, materialmen, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Property, encumbrance or other charge upon the Property or any part thereof or upon Lessee's leasehold interest therein; provided, however, that Lessee shall not be required to discharge any such liens, encumbrances or charges as may be placed upon the Property by the act of Lessor.

Section 8.02. Right to Contest Liens. Lessee shall have the right to contest in good faith and by appropriate legal proceedings, the validity or amount of any mechanics', laborers', materialmen's, suppliers' or vendors' lien or claimed lien. In the event of such contest, Lessee shall give to Lessor reasonable security, as may be required by Lessor, to insure payment thereof and to prevent any sale, foreclosure or forfeiture of the Property or any part thereof by reason of such nonpayment. Such security shall not exceed a sum equal to one and one-quarter times the amount of such lien or such claim for lien. On final determination of such lien or such claim for lien, Lessee shall immediately pay any judgment rendered, with all proper costs and charges, and shall have such lien released or judgment satisfied at Lessee's expense, and upon such payment and release or satisfaction, Lessor shall promptly return to Lessee such security as Lessor shall have received in connection with such contest.

Section 8.03. Protection of Lessor. Nothing in this Lease shall be construed as constituting the consent of Lessor, express or implied to the performance of any labor or the furnishing of any materials or any specific improvements, alteration of or repair to, the Property or any part thereof, by any contractor, subcontractor, laborer or materialman, nor as giving Lessee any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in such manner that would give rise to the filing of mechanics' liens or other claims against the fee of the Property. Lessor shall have the right at all reasonable times to post, and keep posted, on the Property any notices that Lessor may deem necessary for the protection of Lessor and of the Property from mechanics' liens or other claims. In addition, but subject to Section 8.02 hereof, Lessee shall make, or cause to be made, prompt payment of all moneys due and



legally owing by Lessee to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Property and any buildings, structures or improvements thereon.

Section 8.04 Other Prohibited Encumbrances. Lessee shall not engage in any financing or other transaction creating any mortgage upon the Property or upon Lessee's leasehold estate therein. Any such mortgage shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

ARTICLE IX  
CONSTRUCTION

Section 9.01. Design Review Process. Lessor acknowledges receipt of and hereby approves the Design Development Drawings attached hereto as Exhibit D and hereby made a part hereof, ("Design Development Drawings") for the construction and reconstruction activities proposed by Lessee ("Construction"). Immediately following the date hereof, Lessee shall commence work on Preliminary Working Drawings and shall complete and submit the Preliminary Working Drawings to Lessor for approval by it in accordance with Lessor's Design Review Process. On or before January 31, 1977, Lessee shall submit to Lessor Preliminary Working Drawings that shall be in sufficient conformance with Lessor's Design Review Process to enable Lessor to make a decision approving or disapproving the Preliminary Working Drawings. Promptly following such submittal, Lessor shall approve or disapprove the Preliminary Working Drawings. If Lessor approves the Preliminary Working Drawings, review by Lessor in accordance with the Design Review Process thereafter will be limited to consideration of a development or refinement of the Preliminary Working Drawings or to review of elements that are not a part of the Preliminary Working Drawings. Prior to commencement of Construction, Lessee shall submit to Lessor

for approval samples of all exterior building materials, samples indicating the color and finish of the exterior of the so-called "kiosk" (shown on Exhibit D) and samples of all paving and landscaping materials; and all such samples shall be approved by Lessor if they are in conformity with previously approved design submissions.

9.02. Conditions to Commencement of Construction.

Lessee shall not commence Construction, or any stage thereof, unless and until it shall have delivered to Lessor:

- (a) a copy of a building permit issued by the Building Department of the City of Boston covering the Construction, together with evidence satisfactory to Lessor that all application fees in connection therewith have been paid;
- (b) a copy (certified by Lessee to be true and correct) of the contract between Lessee and the general contractor ("Contractor") engaged by Lessee for the Construction that Lessee proposes to commence, together with a Letter of Intent executed by the Contractor substantially in the form of Exhibit E attached hereto and made a part hereof, in which the Contractor undertakes to carry out all of the provisions of Section 18.02 hereof relating to the work to be performed by the Contractor and those engaged by him and the requirements of the Lessor's "Equal Opportunity Compliance Policy," adopted February 20, 1969, a copy of which is attached hereto, marked Exhibit F and made a part hereof;
- (c) evidence of a payment and performance bond covering the performance of the Construction and the payment of all obligations thereunder; and
- (d) any necessary city permits for so-called "curb cuts."

Section 9.03. Commencement and Completion of Construction.

Lessee will promptly commence, diligently prosecute and complete the Construction. If Lessee is delayed in the progress



of construction by labor disputes, fire, unusual delay in transportation, unavoidable casualties or any causes beyond its control, the date on which the payment of Rent shall commence in accordance with Section 6.02 hereof shall be extended, or if Rent has commenced in accordance with Section 6.02, the Rent shall be abated, for the number of days the Construction is so delayed if Lessee shall have given notice of such delay to Lessor not more than ten (10) days from the date of the commencement of the occurrence of such delay.

Section 9.04. Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or at the request of Lessee, all necessary safeguards for the protection of workmen and the public.

#### ARTICLE X

##### MAINTENANCE, OWNERSHIP

##### AND ALTERATION OF IMPROVEMENTS

Section 10.01 Maintenance. Subject to the provisions of Article IX, Lessee shall, at all times and at its expense, keep and maintain the Property, including any altered, rebuilt, additional or substituted buildings, structures and other improvements thereto in good and safe condition and repair and appearance, except for ordinary wear and tear, and will with reasonable promptness make all structural and nonstructural, foreseen and unforeseen, extraordinary and ordinary changes and repairs of every kind and nature that may be required to be made upon or in connection with the Property, or any part thereof, in order to keep and maintain the Property in good and safe condition and appearance. Lessor shall, at all times and at its expense, keep and maintain the Building except for the Property, in good and safe condition and repair and appearance, except for ordinary wear and tear, and will with reasonable promptness make all structural and nonstructural,

foreseen and unforeseen, extraordinary and ordinary changes and repairs of every kind and nature that may be required to be made upon or in connection with the Building, or any part thereof, in order to keep and maintain the Building and the Bus Facility in good and safe condition and appearance; provided, however, that Lessor may in lieu of making such repairs or changes close off and secure any part of the Building so long as Lessee's quiet enjoyment of the Property is not disturbed thereby; and provided, further, that notwithstanding anything else herein contained, Lessor assumes no liability hereunder with respect to the condition of the Property as of the date hereof.

Section 10.02. Ownership. Title to all improvements shall be and remain in Lessee until the expiration of the Term, unless this Lease shall be sooner terminated as herein provided, and except as otherwise expressly provided in Section 18.07 hereof, upon such expiration or sooner termination, title to such improvements as are then remaining shall automatically pass to, vest in, and belong to Lessor without further action on the part of either party and without cost or charge to the Lessor.

#### ARTICLE XI

##### CONDEMNATION

Section 11.01. Total Taking. In case of a Taking, other than for temporary use or of only the leasehold estate hereunder, of the fee of the entire Property, this Lease shall terminate as of the date on which such Taking shall be effective. In case of a Taking, other than for temporary use, of such substantial part of the Property as shall result in the Property remaining after such Taking, even if restoration were made, being economically unsuitable for the use being made of the Property at the time of such Taking, Lessee, at its option, may terminate this Lease by written notice given to Lessor



within sixty (60) days after such Taking. Any Taking of the Property of the character described in this Section 11.01 that results in the termination of this Lease is referred to as a "Total Taking."

Section 11.02. Partial Taking. In the event of a Taking of a portion of the Property, which is not a Total Taking, then and in that event:

- (a) this Lease shall remain in full force and effect as to the portion of the Property remaining immediately after such Taking, without any abatement or reduction of Rent, or any other sum payable hereunder;
- (b) Lessee will promptly commence and complete restoration of the Property as nearly as possible to its condition and character immediately prior to such Taking, except for any reduction in area caused thereby; provided that, in case of a Taking for temporary use, Lessee shall not be required to effect such restoration until such Taking is terminated. Such a restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by Lessor; and
- (c) if the estimated amount of such restoration exceeds the amount of the award resulting from the Taking, Lessee may, at its option give written notice to Lessor of its intent to terminate this Lease, and this Lease, shall terminate on the date that is thirty (30) days after Lessor's receipt of such notice unless Lessor shall within said 30-day period agree to pay such excess.

Section 11.03. Application of Awards. Awards and other payments on account of a Taking (less costs, fees and expenses incurred by Lessor in connection with the collection thereof), shall be applied as follows:

- (a) Net awards and payments received on account of a Taking, other than (i) a Taking for temporary use or (ii) a Taking of only the leasehold estate hereunder, shall be held and applied to pay the cost of restoration of the Property. The balance if any, shall be paid to or retained by Lessor.
- (b) Net awards and payments received on account of (i) a Taking for temporary use or (ii) a Taking of only the leasehold estate created by this Lease shall be paid to or retained by Lessor, provided that, if any portion of any such award or payment is made by reason of any damage to or destruction of the Property, such portion shall be held and applied as provided in the first sentence of clause (a) of this Section 11.03.
- (c) In the event that the Lease is terminated pursuant to Subsection 11.02(c), all net awards and payments shall be paid to Lessor.

## ARTICLE XII

### INSURANCE; RESTORATION AND RECONSTRUCTION OF PROPERTY

Section 12.01. Insurance. During the Term, Lessee at its own cost and expense and as additional rent shall keep the Property insured continuously with the following kinds of insurance and with coverage in amounts not less than stated below in this Section 12.01, written by companies of recognized standing that are authorized to transact the business of insurance in the Commonwealth of Massachusetts and are well-rated, in the opinion of the Lessor, by national rating organizations, and such insurance shall name as the insureds Lessor and Lessee, as their interests may appear:

- (a) Fire and extended coverage insurance in amounts equal to the actual replacement cost (without deduction for depreciation) of the Bus Property and equipment.
- (b) Such comprehensive general public liability insurance as will protect Lessee and Lessor, their agents and employees, from any and all



claims and damages for personal injuries, or death or from damages to any property of Lessee or of the public, which may arise out of or in connection with the performance of any work or operations by Lessee in, on or over the Property during the Construction whether said work or operations be by Lessee, or its contractors or subcontractors, or by anyone directly or indirectly employed by any of them. The amount of comprehensive general public liability insurance to be maintained by Lessee during the construction period shall be not less than One Million Dollars (\$1,000,000) for injuries or death sustained by any one person and no less than Two Million Dollars (\$2,000,000) for injuries or death sustained by two or more persons in any one accident and not less than Three Million Dollars (\$3,000,000) for property damage.

- (c) Immediately upon the completion of the Construction, Lessee shall secure and thereafter maintain in full force and effect throughout the Term general public liability insurance in such amounts as Lessor may, from time to time, deem adequate.
- (d) Workmen's compensation insurance covering all persons employed by Lessee in connection with any work done on or about the Property with respect to which claims for death or bodily injury could be asserted against Lessor, Lessee or the Property, or in lieu of such workmen's compensation insurance, a program of self-insurance complying with the rules, regulations and requirements of the appropriate state agency from time to time in force.
- (e) Such other insurance on the Bus Property in such amounts and against such other insurable hazards which at the time are commonly obtained in the case of property similar to the Bus Property.

Upon submission by Lessee to Lessor of evidence reasonably satisfactory to Lessor that Lessor and any other person claiming against Lessee hereunder shall have recourse against the bond or other form of security of Lessee, Lessor shall waive the provisions of Subsections 12.01(b) and (c) hereof to the extent of the first three hundred thousand dollars of insurance required thereunder.

Section 12.02. Continuation of Insurance. Each such insurance policy shall be written to become effective at the time Lessee becomes subject or exposed to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Lessee is subject or exposed to such risk or hazard.

Section 12.03. Blanket Policies. Nothing in this Article XII shall prevent Lessee from effecting insurance required by this Article XII under a blanket policy or policies; provided, that any such policy or blanket insurance of the kind provided for Subsection 12.01(a) shall specify therein (or Lessee shall furnish Lessor with a written statement from the insurer under such policy specifying) the amount of the total insurance allocated to the Property and equipment on the Property, which amount shall be not less than the amount required by Section 13.01 hereof.

Section 12.04. Noncancellation. All insurance policies shall provide, to the extent obtainable, an agreement by the insurer that it will not cancel such policy except after thirty (30) days prior notice has been given to Lessor, that it will waive any right of subrogation that such insurer may have, and that any loss otherwise payable thereunder shall be payable notwithstanding any act of negligence of Lessor or Lessee or any occupant claiming under Lessee which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment.

Section 12.05 Remedies. In the event Lessee at any time refuses, neglects or fails to secure and maintain in full



force any or all of the insurance required pursuant to this Lease, Lessor, at its option, may procure or renew such insurance, and all amounts of money paid therefor by Lessor shall be payable by Lessee to Lessor with interest thereon at the rate of the large business prime rate charged from time to time on short term loans to large businesses with the highest credit standing by the First National Bank of Boston from date the same were paid by Lessor to the date of payment thereof by Lessee. Lessor shall notify Lessee in writing of the date, purposes and amounts of any such payments made by it, and Lessor may treat such failure of the Lessee to obtain insurance as a default pursuant to Article XIV hereof.

Section 12.06. Effect of Lessor Approval. No acceptance or approval of any insurance policy or policies by Lessor shall relieve or release or be construed to relieve or release Lessee from any liability, duty or obligation assumed by, or imposed upon it by, the provisions of this Lease.

Section 12.07. Certificate of Insurance. Lessee shall deliver to Lessor promptly after the execution and delivery of this Lease the original or duplicate policies or certificates of the insurance that is required to be maintained by Lessee hereunder and Lessee shall, within thirty (30) days prior to the expiration of any such insurance, deliver other original or duplicate policies or certificates of the insurers evidencing the renewal of such insurance.

Section 12.08. Application of Proceeds. In the event that the Property, or any part thereof, is damaged or destroyed, Lessee shall promptly give Lessor written notice of such damage or destruction, setting forth the date on which such damage or destruction occurred. If (a) the Building or Bus Facility shall be damaged to the extent of more than twenty-five percent (25%) of the cost of replacement thereof, (b) the proceeds of Lessor's insurance recovered or recoverable

as a result of the damage shall be insufficient to pay fully for the cost of replacement of the Building, or (c) the Building or Bus Property shall be damaged as a result of a risk that is not covered by Lessor's insurance, then in such event, Lessor may terminate this Lease by Notice given within ninety (90) days of such event and upon the date specified in such notice, which shall not be less than thirty (30) days nor more than sixty (60) days after the giving of such notice, this Lease shall terminate, and Lessee shall vacate and surrender the Property to Lessor. If the Property is damaged during the last year of the Term or any renewal thereof to the extent of more than twenty-five percent (25%) of the cost of replacement thereof, then in such event, Lessee may terminate this Lease by notice given within ninety (90) days after such event and upon the date specified in such notice, which shall not be less than thirty (30) days nor more than sixty (60) days after the giving of said notice, this Lease shall terminate, and Lessee shall vacate and surrender the property to Lessor. Except as aforesaid, whenever any of the Property required to be insured hereunder shall have been damaged or destroyed, Lessee shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims that may have arisen against insurers under insurance policies of Lessee or others based upon any such damage or destruction. Sums of money received as payments for any loss or losses under said insurance policies of Lessee, shall be used and expended for the purpose of fully repairing or reconstructing the Property, or part thereof, that has been destroyed or damaged unless the Lease has been terminated by Lessee as aforesaid in which event such sums shall be paid to Lessor. Subject to the provisions of this Section 12.08, if any such sums remain after such repair or reconstruction has been fully completed, such remainder shall belong to Lessee. Notwithstanding the foregoing, if at the time of Lessee's notice of termination as aforesaid Lessor and Lessee (a) shall enter into a new lease in accordance with Section 14.01 hereof and (b) shall reach agreement on the expenditure of such insurance



payments as a part of Lessee's leasehold improvement costs in the Intermodal Transportation Terminal, Lessee, at its election, may apply such insurance payments in accordance with such agreement.

Section 12.09. Reconstruction by Lessor. If this Lease has not been terminated as provided in Section 12.08, Lessor shall commence and complete, in a good and workmanlike manner, the reconstruction or repair of the Bus Facility and Building except for the Property.

Section 12.10. Reconstruction by Lessee. If this Lease has not been terminated in accordance with Section 12.08, Lessee shall commence and complete, in a good and workmanlike manner, the reconstruction or repair of any part of the Property damaged or destroyed after Lessor has approved (which approval shall not be unreasonably withheld or delayed) Lessee's plans, drawings, specifications and construction schedule for such reconstruction or repair.

### ARTICLE XIII

#### ASSIGNMENT AND SUBLETTING

Section 13.01. No Assignment or Subletting. Lessor acknowledges that Lessee may enter into certain subleases of portions of the Property with the Trombly, Almeida and Peter Pan bus companies. Except as aforesaid, Lessee shall not assign or mortgage this Lease, or any part thereof, or sublet the whole or any part of the Property or permit the Property or any part thereof to be used or occupied by others without the prior consent of Lessor. For purposes of this Section 13.01, any transaction, whether sale, pledge, or otherwise, the effect of which is to cause direct or indirect control and beneficial ownership of the majority interest in Lessee to cease to be vested in the present owner shall be treated as an assignment of the Lease. Any consent by Lessor to any assignment or subletting shall be held to apply only to the specific transaction thereby authorized, and such consent shall not be construed as a waiver of the obligation of Lessee to obtain the consent of Lessor to any other or subsequent assignment or subletting, or as in any way modifying or limiting the rights

of Lessor hereunder. Any assignment, mortgage, sublease or other transaction made in violation of this Section 13.01 shall be void.

Notwithstanding the foregoing, (a) Lessee may in any event without Lessor's consent assign this Lease to, or sublet to, any corporation of which at the time Lessee shall be a wholly owned subsidiary, or to any wholly owned subsidiary of a corporation of which at the time Lessee shall be a wholly owned subsidiary, provided that Lessee shall at all times remain liable for the full performance of each and every covenant of this Lease on the part of Lessee to be performed, and (b) this Article XIII shall not prohibit the sale or pledge of all of the stock of Trailways of New England, Inc.

Section 13.02. Assignment by Lessor. Lessor may without Lessee's consent assign this Lease at any time and from time to time.

#### ARTICLE XIV

##### INTERMODAL TRANSPORTATION TERMINAL

Section 14.01. Intermodal Transportation Terminal. In the event that this Lease has not been terminated, upon the completion of the Intermodal Transportation Terminal, Lessor and Lessee shall each negotiate in good faith and exercise its best efforts to reach agreement and enter into a new lease demising to Lessee space to carry on in the Intermodal Transportation Terminal those activities to be carried on hereunder. If, this Lease is terminated prior to the end of the sixtieth (60th) month after the date hereof and such new lease thereupon commences, Lessor will credit Lessee's rental due under any such lease with an amount equal to the Unamortized Leasehold Improvement Costs. For all purposes of this Lease, the Intermodal Transportation Terminal shall be deemed to be completed on the date on which Lessor gives Lessee notice that, subject to agreement between Lessor and Lessee on the provisions of a lease therefor, the Intermodal Transportation Terminal is ready for occupancy by Lessee. Except as otherwise expressly set forth herein, Lessor disclaims any representation as to the Intermodal Transportation Terminal or the nature, type, quality, elements, size or occupants thereof.



DEFAULT

Section 15.01. Events of Default. Any of the following occurrences or acts shall constitute an "Event of Default" under this Lease:

- (a) if Lessee at any time during the Term (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal that have or might have the effect of preventing Lessee from complying with the terms of this Lease) shall fail (i) to make payment of any installment of Rent, additional rent or of any other sum herein specified to be paid by Lessee, or (ii) to observe or perform any of Lessee's other covenants, agreements or obligations hereunder; and if any such default shall not be cured as to any default referred to in clause (i) within ten (10) days after receipt of notice thereof by Lessee or as to any default referred to in clause (ii) within thirty (30) days after Lessor shall have given to Lessee notice specifying such default (or, in the case of any default referred to in clause (ii) that cannot with diligence be cured within such thirty (30) day period, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it being intended, in connection with a default not susceptible of being cured with diligence within such thirty (30) day period, that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with diligence);
- (b) if Lessee shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or

shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of Lessee as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof;

- (c) if a receiver, trustee or liquidator of Lessee or of all or substantially all of the property of Lessee or of the Property shall be appointed in any proceeding brought by Lessee, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Lessee and if such receiver, trustee or liquidator shall not be discharged within sixty (60) days after such appointment, or if Lessee shall acquiesce in or consent to such appointment; or
- (d) if the Property shall remain substantially unoccupied or unattended for a period of sixty (60) days.

Section 15.02. Remedies in Event of Default. If an event of Default shall have happened and be continuing, Lessor shall have the right, at its election, then or at any time thereafter while any such Event of Default shall continue, to give Lessee notice of Lessor's intention either (a) to terminate the Term of this Lease or (b) to reenter and take possession of the Property on a date specified in such notice, which date shall not be less than ten (10) days after the date of giving of such notice, and on the date specified in any such notice Lessee's right to possession of the Property shall cease and Lessee shall peaceably and quietly yield to and surrender to Lessor the Property, and if Lessor shall have given notice



of its intention to terminate the Term of this Lease, the Term of this Lease shall thereupon be terminated. In the event such notice is given, Lessor shall have the immediate right of re-entry and possession of the Property and the right to remove all persons and property therefrom. Should Lessor elect to reenter as herein provided or should Lessor take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may thereafter either terminate the Term of this Lease or from time to time, without terminating the Term of this Lease, relet the Property or any part thereof for such term or terms and at such rental or rentals and upon such terms and conditions as Lessor may deem advisable, with the right to make alterations and repairs to the Property.

Section 15.03. Rights in Event of Termination. In the event of any termination of the Term of this Lease as provided in Section 15.02 hereof or as otherwise permitted by law, Lessor may enter upon the Property, and again have, repossess and enjoy the same as if this Lease had not been made, and in any such event neither Lessee nor any person claiming through or under Lessee by virtue of any statute or of any order of any court shall be entitled to possession or to remain in possession of the Property but shall forthwith quit and surrender the same, and Lessor may proceed with any rights or remedies available to it under law or equity.

Section 15.04. Rights of Lessor in Event of Reentry. If Lessor shall reenter and obtain possession of the Property by reason of or following any default of Lessee, whether or not the Term shall have terminated, Lessor shall have the right, without notice, to repair or alter the Property in such manner as Lessor may deem necessary or advisable so as to put the Property in good order and to make the same rentable, considering the use of the Property immediately prior thereto, and shall have the right, at Lessor's option, to relet the Property or any part thereof, and Lessee agrees to pay Lessor on demand all expenses incurred by Lessor in obtaining possession, and in repairing and putting the Property in

good order and condition, and in reletting the same, including reasonable fees of attorneys, architects and agents, and also any other reasonable and legitimate expenses or commissions, and Lessee further agrees to pay Lessor, on the dates on which Rent would have been due as specified herein following such reentry until the end of the Term, the sum of money which would have been payable by Lessee as Rent and additional rent, if Lessor had not reentered and resumed possession of the Property, deducting only the net amount of rent, if any, which Lessor shall actually receive (after deducting from the gross receipts the expenses, costs and payments of every kind of Lessor which in accordance with the terms of this Lease would have been borne by Lessee) in the meantime from and by any reletting of the Property, and Lessee hereby agrees to be and remain liable for all sums aforesaid, as well as for any deficiency aforesaid, and Lessor shall have the right from time to time to begin and maintain successive actions or other legal proceedings against Lessee for the recovery of such deficiency or damages or for a sum equal to any installment or installments of Rent and additional rent and to recover such sums upon the liability of Lessee herein provided, which liability it is expressly covenanted shall survive the issuance of any action to secure possession of the Property. In determining the Rent which would be payable by Lessee subsequent to such reentry, the Rent for each year of the unexpired term of this Lease shall be equal to the average annual Rent paid by Lessee from the date hereof to the time of the Event of Default, or during the preceding three (3) calendar years, whichever period is shorter. Nothing herein contained shall be deemed to require Lessor to wait to begin such action or other legal proceedings until the date when the Term would have expired had there been no such default by Lessee.

Section 15.05. No Termination. No such reentry or taking of possession of the Property by Lessor shall be construed



as an election on Lessor's part to terminate the Term unless a notice of such intention is given to Lessee or unless the termination hereof is decreed by a court of competent jurisdiction.

Section 15.06 Remedies Not Exclusive. No right or remedy herein conferred upon or reserved to Lessor or Lessee is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein.

#### ARTICLE XVI

##### NOTICES AND DEMANDS

Section 16.01. Notices. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof, shall be in writing, and shall be deemed to have been properly given if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed, if intended for Lessor, to it at City Hall, Boston, Massachusetts, Attention of the Director, and if intended for Lessee to it at South Station, Boston, Massachusetts. Lessor or Lessee shall, at any time and from time to time, have the right to specify as its proper address for purposes of this Lease any other address or addresses giving fifteen (15) days' written notice thereof to the other party.

#### ARTICLE XVII

##### INDEMNIFICATION

Section 17.01. Indemnification of Lessor. Lessee shall pay, and protect, indemnify and save harmless Lessor from and against any and all liabilities, losses, damages, costs, expenses, including all reasonable attorneys' fees and expenses of Lessee and of Lessor, causes of action, suits,

claims, demands or judgments of any nature whatsoever (except those which result from the acts of Lessor) that may be imposed upon or incurred by or asserted against Lessor by reason of (a) any accident, injury to, or death of any person or any damage to property occurring on the Property or any part thereof (except as may result from the acts of Lessor) or (b) any use, nonuse, condition, or occupation of the Property or any part thereof or resulting from the condition thereof, or (c) any failure by Lessee to perform or comply with any of the terms hereof or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the Property or any part thereof or the ownership, occupancy or use thereof.

Section 17.02. Indemnification of Lessee. Lessor shall pay, and protect, indemnify and save harmless Lessee from and against any and all liabilities, losses, damages, costs, expenses, including all reasonable attorneys' fees and expenses of Lessor and of Lessee, causes of action, suits, claims, demands or judgments of any nature whatsoever (except those which result from the acts of Lessee) that may be imposed upon or incurred by or asserted against Lessee by reason of (a) any accident, injury to, or death of any person or any damage to property occurring in the common areas described in Section 4.05 hereof or any part thereof (except as may result from the acts of Lessee) or (b) any use, nonuse, condition, or occupation of such property or any part thereof or resulting from the condition thereof, or (c) any failure by Lessor to perform or comply with any of the terms hereof or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting such Property or any part thereof or the ownership, occupancy or use thereof.



ARTICLE XVIII

MISCELLANEOUS

Section 18.01. No Personal Liability. No member, official, or employee of Lessor shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official or employee participate in any decision relating to this Lease which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of Lessor shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by Lessor or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

Section 18.02. Nondiscrimination. Lessee, for itself and its successors and assigns, agrees that during the Construction of the Property provided for in this Lease:

- (a) Lessee will not discriminate against any employee or applicant for employment because of race, color, sex, religion, or national origin. Lessee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, sex, religion, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Lessor setting forth the provisions of this nondiscrimination clause.
- (b) Lessee will, in all solicitations or advertisements for employees placed by or on behalf of Lessee, state that all qualified applicants will receive

consideration for employment without regard to race, color, sex, religion, or national origin.

- (c) Lessee will send to each labor union or representative of workers with which Lessee has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the labor union or workers' representative of Lessee's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) Lessee will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) Lessee will furnish all information and reports required by Executive Order 11246 of September 23, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or the Secretary of Housing and Urban Development pursuant thereto, and will permit access to the Lessee's books, records, and accounts by the Lessor, the Secretary of Housing and Urban Development, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules and orders.
- (f) In the event that Lessee fails to comply with the nondiscrimination clauses of this Section 18.02 or with any of the said rules, regulations, or orders, this Lease may be cancelled, terminated or suspended in whole or in part and Lessee may be declared ineligible for Government contracts or federally



assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (g) Lessee will include the provisions of paragraphs (a) through (g) of this Section in every contract (including without limitation, all Subleases) or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. Lessee will take such action with respect to any construction contract, subcontract, or purchase order as Lessor or the Department of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Lessee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Lessor or the Department of Housing and Urban Development, Lessee may request the United States of America to enter into such litigation to protect the interests of the United States of America. For the purposes of including such provisions in any construction contract, subcontract, or purchase order,

as required hereby, the first three lines of this Section shall be changed to read "During the performance of this Contract, the Contractor agrees as follows:" and the term "Lessee" shall be changed to "Contractor" or such other term as may in the context be appropriate.

- (h) If at any time the Director of the Boston Redevelopment Authority ("Director") shall find that Lessee has failed to comply with the requirements of the Lessor's "Equal Opportunity Compliance Policy" and the provisions of this Section 18.02 the Director shall issue notice of such finding, setting forth the reasons therefor. Lessee shall have the right to appeal such finding to Lessor within thirty (30) days after receipt by Lessor of notice of Lessee's intention to appeal said finding, or at the next regular meeting of Lessor, whichever is later.

Lessor shall hear such appeal at a public meeting.

Upon the failure of Lessee to appeal the finding of the Director, or upon the determination by Lessor, subsequent to an appeal of the finding, that the Lessee has failed to comply with the requirements of the Lessor's "Equal Opportunity Compliance Policy" and the terms and provisions of Subsection 9.02(b) hereof and this Section 18.02, the Director shall send a notice of his finding and any other findings of Lessor related thereto to the following:

- (a) Secretary, Department of Housing and Urban Development;
- (b) Regional Administrator, Department of Housing and Urban Development;
- (c) Commissioner, Federal Housing Administration;
- (d) Director, Boston Office, Federal Housing Administration;
- (e) Massachusetts Committee Against Discrimination in Housing;



- (f) Association of General Contractors;
- (g) The Building Trades Council;
- (h) Mayor, City of Boston; and
- (i) Such other interested parties as the Director may deem appropriate.

Section 18.03. Estoppel Certificates. Lessor and Lessee shall at any time and from time to time, within ten (10) days after written request by the other, execute, acknowledge and deliver to the party which has requested the same a certificate stating (a) that the Lease is unmodified and in force and effect (or if there have been modifications, that the Lease is in force and effect as modified, and identifying the modification agreement, or if the Lease is not in force and effect the certificate shall so state); (b) the date to which rental has been paid under the Lease, (c) whether there is an existing default by Lessee in the payment of any rent or other sum of money under the Lease and whether there is any other existing default by either party under the Lease with respect to which a notice of default has been served, and if there is any such default, specifying the nature and extent thereof; and (d) whether there are any setoffs, defenses or counterclaims against enforcement of the obligations of Lessor hereunder. After issuance of any such certificate, the issuer shall be estopped from denying the veracity or accuracy of the same.

Section 18.04. Headings. The headings of the various Articles and Sections of this Lease have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

Section 18.05. Consents. Except as herein otherwise provided, whenever in this Lease the consent or approval of Lessor or Lessee is required, such consent or approval shall be in writing, signed by an officer or agent thereunto duly authorized of the party granting such consent or giving such approval and, unless otherwise expressly set forth, shall not be unreasonably withheld or delayed.

Section 18.06. Right to Contest Laws. Nothing herein shall limit the right of Lessee to contest the validity or enforceability of (a) any statute, law, rule, order, regulation, ordinance or (b) finding of the Director pursuant to Section 18.02, with which Lessee may be requested to comply under this Lease.

Section 18.07. Surrender. Upon the expiration or earlier termination of this Lease, Lessee shall peaceably leave and surrender the Property to Lessor in the same condition in which the Property was originally received from Lessor at the commencement of this Lease, except as repaired, rebuilt, restored, altered, or added to as permitted or required by any provisions of this Lease and except for ordinary wear and tear. Lessee shall remove from the Property on or prior to such expiration or earlier termination, all property situated thereon that is not owned by Lessor and all trade and other fixtures installed by it, including, without limitation, ticket counters, desks and lockers and, at its expense, shall, on or prior to such expiration or earlier termination, repair any damage caused by such removal. Property not so removed shall become the property of the Lessor, and Lessor may thereafter cause such property to be removed from the Property and disposed of, but the cost of any such removal and disposition and the cost of repairing any damage caused by such removal shall be borne by Lessee.

Section 18.08. Covenants Separate and Independent. Each and every covenant and agreement contained in this Lease is, and shall be construed to be, a separate and independent covenant and agreement, and the breach of any such covenant or agreement by either party shall not discharge or relieve the other party from its obligations to perform hereunder. If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable,



shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

Section 18.09. Effect of Covenants. All of the covenants, conditions and obligations contained in this Lease shall be binding upon and inure to the benefit of the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign were in each case named as a party to this Lease.

Section 18.10. No Partnership. Nothing herein shall be deemed or construed by the parties hereto or by any third party as creating or authorizing the creation of any partnership or joint venture between Lessor and Lessee, it being understood and agreed that no provision of this Lease, nor any act of Lessor or Lessee hereafter, shall be deemed to create any relationship between Lessor and Lessee other than the relationship of landlord and tenant.

Section 18.11. Modification. This Lease may not be modified or amended except by a writing signed by Lessor and Lessee.

Section 18.12 Park Plaza Urban Renewal Project Relocation Benefits. Lessor hereby represents to Lessee that present plans for the implementation of the so-called "Park Plaza Urban Renewal Project" do not provide for the taking, by exercise of the power of eminent domain or otherwise, of the property presently occupied by Lessee in the Park Square area of Boston, Massachusetts prior to June 1, 1977. Lessee hereby waives the right to receive, and releases Lessor, the City of Boston, the Commonwealth of Massachusetts and all other governmental entities from the obligation, if any, to make any and all relocation payments or payments for moving expenses as a result of the acquisition of such property in Park Square by any of the aforesaid entities or their assigns. In the event that Lessee receives any such payment in contravention of the foregoing provisions of this Section 18.12, Lessor may, at its election, terminate this Lease and proceed with any remedy available to it under Article XV for the occurrence of an Event of Default by Lessee or increase the rent payable by Lessee under this lease by the amount of any such payment. The provisions of this Section 18.12 shall not apply to any such pay-

ments that are made or reimbursed by the United States of America or any agency thereof so long as Lessor reasonably determines that the making or reimbursement of such payments will not result in a reduction of funds or benefits that would otherwise be made available by the United States of America or any agency thereof to relocatees of the Park Plaza Urban Renewal Project, Lessor, the City of Boston, the Commonwealth of Massachusetts or any agency or subdivision of the foregoing.

Section 18.13. Governing Law. This Lease shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the undersigned Boston Redevelopment Authority and Trailways of New England, Inc. have executed this Lease as of the date and year first above written.

ATTEST:

BOSTON REDEVELOPMENT AUTHORITY

\_\_\_\_\_  
Approved as to Legal Form:

By \_\_\_\_\_

\_\_\_\_\_  
General Counsel

ATTEST:

TRAILWAYS OF NEW ENGLAND, INC.

\_\_\_\_\_

By \_\_\_\_\_

The undersigned hereby consent to the foregoing Lease:

ATTEST:

BOSTON TERMINAL CORPORATION

\_\_\_\_\_

By \_\_\_\_\_

ATTEST:

CONSOLIDATED RAIL CORPORATION

\_\_\_\_\_

By \_\_\_\_\_

ATTEST:

NATIONAL RAILROAD PASSENGER CORPORATION

\_\_\_\_\_

By \_\_\_\_\_



NOTICE OF LEASE

In accordance with the provisions of Massachusetts General Laws, Chapter 183, Section 4, as amended, notice is hereby given of the following described lease:

PARTIES TO LEASE:

Lessor: Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts.

Lessee: Trailways of New England, Inc., a corporation organized and existing under the laws of the Commonwealth of Massachusetts

DATE OF EXECUTION:

Date of Execution of Lease: December , 1976

DESCRIPTION

That certain "Property," including the "Bus Property," meaning "the property outlined in red on Exhibit A, attached hereto and hereby made a part hereof, and all improvements, fixtures, appurtenances and easements, and alterations, replacements, additions and substitutions therefor, now or hereafter located thereon;" and the "Station Property," meaning "the property outlined in red on Exhibit B, attached hereto and hereby made a part hereof, and all improvements, fixtures, appurtenances and easements and alterations, replacements, additions and substitutions therefor, now or hereafter located thereon."

TERM OF LEASE:

The Term of this Lease shall be the period commencing on December , 1976, and ending (a) at midnight on the date that is seventy eight (78) months from the date hereof; (b) simultaneously with the occupancy by Lessee of a part of the Intermodal



Transportation Terminal under a lease with Lessor or its successor or assignee; or (c) at any time after the sixtieth (60th) month from the date hereof, on the one hundred and twentieth (120th) day after a termination notice from Lessor, but only in the event that the Intermodal Transportation Terminal is ready for occupancy by Lessee, and Lessor and Lessee do not enter into a lease demising to Lessee a part of the Intermodal Transportation Terminal, whichever first occurs.

RIGHTS OF EXTENSION OR RENEWAL:

In the event that the Intermodal Transportation Terminal is not reasonably ready for occupancy by Lessee at the expiration of the Term (as above described), Lessee, on proper notice and subject to certain conditions, may elect to extend said Lease for an additional term of five (5) years.

WITNESS the execution hereof under seal by said parties to said lease.

BOSTON REDEVELOPMENT AUTHORITY

[SEAL]

By \_\_\_\_\_

TRAILWAYS OF NEW ENGLAND, INC.

[SEAL]

By \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this        day of December 1976, before me appeared  
                 to me personally known, who being by me duly sworn,  
did say that he is the                      of the Boston Redevelopment  
Authority and that the seal affixed to said instrument is the  
corporate seal of said Authority, and that said instrument was  
signed and sealed in behalf of said Authority by authority  
of its board of directors, and said                      acknowledged  
said instrument to be the free act and deed of said Authority.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_.



COMMONWEALTH OF MASSACHUSETTS

On this            day of December , 1976 before me appeared  
                       , to me personally known, who being by me  
duly sworn, did say that he is the                                  of Trailways  
of New England, Inc., and that the seal affixed to said  
instrument was signed and sealed in behalf of said Corpora-  
tion by authority of its Board of Directors,, and said  
                       acknowledged said instrument to be the free  
act and deed of said Corporation.

[SEAL]

Notary Public

My Commission expires:\_\_\_\_\_.